

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-1003

May 18, 1999

COMMUNITY SERVICE LONG DISTANCE
Petition for Finding of Public
Convenience and Necessity to
Provide Local Service

ORDER GRANTING AUTHORITY
TO PROVIDE DEDICATED
LOCAL SERVICE AND
RESOLD LOCAL EXCHANGE
SERVICE

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

In this Order, the Commission grants Community Service Long Distance d/b/a CommTel Communications (CSLD or Company) the authority to provide dedicated local service and resold local exchange service in the State of Maine. We also exempt CSLD from the requirements of Chapter 210, *Uniform System of Accounts*, and of 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

I. APPROVAL OF APPLICATION TO SERVE

On December 31, 1998, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, CSLD filed a petition with the Commission requesting authority to provide local exchange telephone service in Maine. In Docket No. 97-525, CSLD has previously obtained authority from the Commission to provide interexchange service.

On May 5, 1999, CSLD filed a letter amending the scope of its requested authority. The letter states:

The applicant requests authority to provide local service through resale and through the provision of dedicated services, including through the use of unbundled network elements and collocation. The Applicant does not seek authority to provide facilities-based switched local exchange services at this time.

Before we grant approval under section 2102 for another public utility to provide service, 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require an additional utility to provide service in a location where another utility is already authorized or is providing the same or similar service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting CSLD the authority to provide local exchange service will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

We have previously found that CSLD is qualified to provide interexchange service. We therefore find that its financial and management capabilities are adequate to provide local services in Maine.

II. SERVICE TERRITORY

CSLD has requested authority throughout the state to carry local traffic using dedicated facilities, such as, but not limited to, private lines and special access. CSLD already has authority to provide interexchange service. Dedicated local service is not “exchange” service because it is not switched. CSLD has also requested authority to provide local exchange service throughout the state. It states that it will offer local exchange service at this time only as a reseller of switched local exchange service provided by other local exchange carriers (LECs) that provide service in Maine. CSLD's authority to provide local exchange service is limited to resale unless it obtains further authorization from the Commission. CSLD is not authorized at this time to provide facilities-based local exchange service.

We define local exchange resale as the offering of local exchange service purchased from another competitive local exchange carrier (CLEC) pursuant to 47 U.S.C. § 251(b)(1) or from an incumbent local exchange carrier (ILEC) at a wholesale discount pursuant to 47 U.S.C. § 251(c)(4). The purchase of unbundled network elements from an ILEC and their use in providing either local exchange service or dedicated local service is facilities-based service and not resale.

If CSLD wishes to expand the scope of its authority in the future to provide facilities-based (switched) local exchange services, it shall seek approval pursuant to 35-A M.R.S.A. § 2102, requesting the Commission to amend this Order. CSLD shall simultaneously file rates, terms and conditions pursuant to 35-A M.R.S.A. § 307 stating

that it will provide facilities-based local exchange service, and stating its proposed service territory for that service. The service territory requested under section 2102 and in CSLD's proposed terms and conditions shall be limited to those areas in which CSLD will be ready to provide facilities-based switched local exchange service within a reasonable period of time. The application shall include information establishing that readiness. It is not necessary for a CLEC with existing authority to present a full application in order to request additional service territory authority. The Commission will act expeditiously on any such application and revisions of terms and conditions.

III. NEED TO FILE TERMS AND CONDITIONS AND RATE SCHEDULES

In order to provide actual service, a utility not only must have authority to provide service but must have on file with the Commission a schedule of rates, terms and conditions for the services it will provide. CSLD has not filed any rate schedules for local exchange service at this time. 35-A M.R.S.A. § 304 requires that a utility must file rate schedules and terms and conditions prior to providing a service, unless it provides services by special contract pursuant to 35-A M.R.S.A. § 703 (3-A). CSLD has indicated that it will provide some services pursuant to special contract. Terms and conditions shall specify the areas in which CSLD will actually provide originating and terminating local exchange service, and may do so by reference to incumbent local exchange carrier (ILEC) exchanges rather than by municipalities.

III. INTERCONNECTION AGREEMENT(S)

In order to provide local exchange service, a competitive local exchange carrier must, as a practical matter, obtain an interconnection agreement or a resale agreement with the ILEC(s) providing service in any area where it intends to provide service. In the absence of such an agreement, it will not be possible for CSLD's customers to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission. It is possible for CSLD to provide dedicated unswitched local service without an interconnection agreement.

If a CLEC makes a bona fide request for an interconnection agreement with an ILEC that is a "rural telephone company" as defined in 47 U.S.C. § 153(37), the "rural exemption" of 47 U.S.C. § 251(f) will apply. All of Maine's independent telephone companies are "rural telephone companies." A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(f)(1)(B), finds that the requirement "is not unduly economically burdensome, is technically feasible, and is consistent with [the universal service provisions of] section 254" Although the service territory we grant today is statewide, as a practical matter a CLEC cannot offer local exchange service in the service territory of a rural ILEC until such time as that ILEC's rural exemption is terminated.

If CSLD executes an interconnect agreement(s) with ILECs(s) it shall obtain approval of that agreement by this Commission.

As a condition of providing local exchange service, CSLD must comply with the terms of any interconnection agreements that it has reached with any ILECs and that have been approved by the Commission.

IV. WAIVERS; REPORTING REQUIREMENTS

As a condition of providing local exchange service, CSLD must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. CSLD shall also comply with any applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

Although CSLD has not requested a waiver from the requirements of Chapter 210 of the Commission's Rules, which governs telephone utility accounting, or from 35-A M.R.S.A. §§ 707 and 708, which govern reorganizations and affiliated interests, the Commission has the authority to grant such waivers on its own motion. Because CSLD's rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements. However, CSLD must report its annual intrastate gross operating revenues and its annual intrastate minutes for use for the purpose of determining its regulatory assessment.¹ If CSLD resells service to other switched or switchless telephone service providers, the Company must maintain its records so that it may separately identify those sales.

In addition, CSLD shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in Ordering Paragraph No. 3. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity. The exemption from 35-A M.R.S.A. §§ 707 and 708 does not apply to Community Service Telephone Company (CST), which is an affiliated interest of CSLD. CST must continue to comply with the requirements of sections 707 and 708, as modified by the Commission's order in *Community Service Telephone Company, Request For Exemption From Approvals Of Certain Reorganizations Under 35-A M.R.S.A. Section 708*, Docket No. 98-973, Order (May 11, 1999), because it is an incumbent local exchange carrier, and the Commission actively regulates its rates.

V. OTHER REQUIREMENTS

CSLD shall comply with all applicable rules of the Commission and statutes of the State of Maine.

¹The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

VI. ORDERING PARAGRAPHS

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of Community Service Long Distance to provide dedicated local service and competitive local exchange telephone service as a reseller in the State of Maine ;

2. Exempt Community Service Long Distance from the requirements of Chapter 210 of the Commission's Rules, except that it must report the revenue and minutes of use information that is requested by the Commission, on or before April 1 of each year; and

3. Exempt Community Service Long Distance, (CSLD) from the approval requirements of 35-A M.R.S.A. §§ 707 and 708, provided that CSLD shall notify the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of CSLD or of any entity that owns more than 50% of CSLD. CSLD shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and change of its contact person. CSLD shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, CSLD shall amend its rate schedules and terms and conditions to reflect any change in identity.

4. Order that Community Service Long Distance shall not provide local exchange telephone service until it files with the Commission rates, terms and conditions for the provision of such service.

5. Order that Community Service Long Distance shall comply with all applicable rules of the Commission.

Dated at Augusta, Maine this 18th day of May, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.